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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/802,325 | 03/08/2001 | Frank Remley | 1017-008US01 | 5268 |

28863 7590 02/10/2005
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| EXAMINER |
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FULTS, RICHARD C

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| ART UNIT | PAPER NUMBER |
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3628

DATE MAILED: 02/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/802,325

Applicant(s)

REMLEY ET AL.

Examiner

Richard Fults

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2001.
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-36 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2005/1.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

1. Claims 1-36 are rejected under 35 USC 101 as the claimed invention is directed to non-statutory subject matter. No technology is described in the specification and none is being claimed. For a claim to be statutory under 35 USC 101 the following two conditions must be met:

1) In the claim, the practical application of an algorithm or idea results in a useful, concrete, tangible result,

AND

2) The claim provides a limitation in the technological arts that enables a useful, concrete, tangible result.

As to the technology requirement, note MPEP Section IV 2(b). Also note *In re Waldbaum*, 173USPQ 430 (CCPA 1972) which teaches "useful arts" is synonymous with "technological arts". In *Musgrave*, 167USPQ 280 (CCPA 1970), *In re Johnston*, 183USPQ 172 (CCPA 1974), and *In re Toma*, 197USPQ 852 (CCPA 1978), all teach a technological requirement.

The invention in the body of the claim must recite technology. If the invention in the body of the claim is not tied to technological art, environment, or machine, the claim is not statutory. Ex parte Bowman 61USPQ2d 1665, 1671 (BD. Pat. App. & Inter. 2001) (Unpublished).

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-36 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The "target yield" is stated as being in a range of 85% to 95%, but is not defined as what actual level it should be set at in a pricing formula, except by subjective means. The specification states that the "target value" "can" (or cannot) be based on a target yield and a target price. The "target price" can (or cannot) be based on a futures price, "as agreed" upon by the buyer and seller. The price "adjustment" in turn is based on the latter subjective measurements, which makes it yet another subjective negotiation factor, as are likewise the benchmark and reference factors, for the reasons stated. This results in all of the price elements being negotiated before any calculation is made, which in turn results in the entire pricing process being subjective without regard to the stated formula. The sole use of the formula being described is to sum up all of the subjective pricing factors into a pre-negotiated total.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The "target yield" is stated as a range of 85% to 95%, but is not defined as what actual level it should be set at, except by subjective means. The specification states that the "target value" "can" (or cannot) be based on a target yield and a target price. The "target price" "can" (or cannot) be based on a futures

price, "as agreed" upon by the buyer and seller. The price "adjustment" in turn is based on the latter subjective measurements, which makes it yet another subjective negotiation factor, as are likewise the benchmark and reference factors, for the reasons stated. This results in all of the price elements being negotiated before any calculation is made, which in turn results in the entire pricing process being subjective without regard to the stated formula. The claims do not define how all of these factors are determined except through subjective negotiation. The sole use of the formula being described is to sum up all of the subjective pricing factors into a pre-negotiated total.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bunje, Cooperative Farm Bargaining and Price Negotiations, 1980.

Bunje discloses (see at least pages 91-102, but in particular page 92) all of the steps and methods described in claims 1-36, including setting a target value based on a target yield and a target price for output produced by an agricultural producer, setting a benchmark value based on a benchmark price and actual yield for the output produced by the agricultural producer, determining a contract value for payment to the agricultural producer based on the actual yield and an actual price marketed by the agricultural producer plus a revenue adjustment in the event the target value exceeds the benchmark value, setting a reference value for the output produced by the agricultural

producer based on the target price and a reference yield for the output, and setting the maximum revenue adjustment based on a percentage of the reference value. Bunje does not disclose a formula for the calculation of prices.

However Bunje does teach that (page 92) **“In fact, the business of farm bargaining has much in common with the negotiations in other fields, whether in labor, industry, real estate, and so forth. Each (price) negotiation activity is tailored to fit the needs of a particular commodity or industry.”** In agriculture the key factors in crop pricing are: type of commodity, historical and projected yields, crop conditions, weather, futures and historical prices, and the working relationship between the producer and the buyer, including any reciprocal purchase arrangements. What is described within this application, both specification and claims, are standard old and well known pricing negotiation techniques using subjective adjectives for estimated values of various price categories as a way to arrive at a negotiated price, with possible adjustments to be added under certain conditions. It would have been obvious to one skilled in the art at the time of the invention to have been fully aware of the need to tailor the pricing factors to the industry and specific commodity being priced, and those factors described and included in the subjective calculation within claims 1-36 are but one example of such common, old, and well known tailoring for the subjective negotiation of prices in a transaction. The sole use of the formula being described is to sum up all of the subjective pricing factors into a pre-negotiated total.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard Fults whose telephone number is 703-305-5416. The examiner can normally be reached on weekdays from 8:30 to 5:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung Sough, can be reached on (703)-305-0505. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.


RCF

2/2/2005


FRANTZ PONNAL
PRIMARY EXAMINER
AU 3628